

EXHIBIT E

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:) CDC Number E-98605
GARY LUTHER)
_____)

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

JANUARY 10, 2006

10:50 A.M.

PANEL PRESENT:

Mr. Jack Garner, Presiding Commissioner
Ms. Noreen Blonien, Deputy Commissioner

OTHERS PRESENT:

Mr. Gary Luther, Inmate
Ms. Catera E. Rutledge, Attorney for Inmate
Correctional Officers, Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

P. M. LaChapelle, Peters Shorthand Reporting

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1 P R O C E E D I N G S

2 DEPUTY COMMISSIONER BLONIEN: Okay,
3 we're on tape.

4 PRESIDING COMMISSIONER GARNER: Okay.
5 This is a Subsequent Parole Consideration
6 Hearing for Gary Luther, L-U-T-H-E-R, CDC Number
7 E like Edward, 98605. Today's date is January
8 10, 2006. The time is 10:50 a.m., and we're
9 located at the Correctional Training Facility in
10 Soledad. The inmate was received was June 7,
11 1991, from the County of Kern. The offense was
12 murder in the second degree. The Case Number is
13 E Edward 98605 (sic), Count Number 1, Penal Code
14 section 187, second degree. The term was 15 to
15 life. The minimum eligible parole date was
16 September 29, 2002, and the date that the life
17 term started was September 29, 1992.

18 This hearing is going to be tape-recorded, and
19 for purposes of voice identification for the
20 transcriber, I'm going to ask the participants
21 to identify themselves, first name, last name,
22 spelling the last name and Mr. Luther, when we
23 get to you, if you'd give us your CDC Number.
24 I'll start and go to my left. I'm Jack Garner,
25 G-A-R-N-E-R, Commissioner.

26 DEPUTY COMMISSIONER BLONIEN: I'm Noreen
27 Blonien, B-L-O-N-I-E-N, I'm a Deputy

1 Commissioner.

2 **ATTORNEY RUTLEDGE:** Catera (phonetic) E.
3 Rutledge, R-U-T-L-E-D-G-E, attorney for Mr.
4 Luther.

5 **INMATE LUTHER:** Gary Luther, E-98605.
6 Luther, L-U-T-H-E-R.

7 **PRESIDING COMMISSIONER GARNER:** Thank
8 you. Also for the record, we have two
9 Correctional Peace Officers in the room for
10 purposes of security. Ms. Rutledge, I have a
11 BPT 1073 ADA form and it's signed by Mr. Luther
12 on December 20, 2004, indicating he does not
13 have a disability other than that he does use
14 eyeglasses, which I do note today that you're
15 wearing for reading purposes, sir?

16 **ATTORNEY RUTLEDGE:** I had (indiscernible)
17 for everyday. I'm nearsighted.

18 **PRESIDING COMMISSIONER GARNER:** All
19 right. Have there been any changes or other
20 accommodations that we need to do since December
21 of 2004?

22 **ATTORNEY RUTLEDGE:** (indiscernible -
23 coughing)

24 **PRESIDING COMMISSIONER GARNER:** Okay.
25 Thank you. This Hearing is being conducted
26 pursuant to Penal Code sections 3041 and 3042
27 and the rules and regulations of the Board of

1 Parole Hearings governing Parole Consideration
2 Hearings for life inmates.
3 The purpose of today's Hearing is to consider
4 your suitability for parole. In doing so, we
5 will consider the number and nature of the
6 crimes you were committed for, your prior
7 criminal and social history and your behavior
8 and programming since your commitment. We've
9 had the opportunity to review your Central File
10 and your prior Hearing transcript. You'll be
11 given an opportunity to correct or clarify the
12 record.
13 We'll consider your progress since your
14 commitment and since your last Hearing. Your
15 updated counselor's report and psychological
16 report will also be considered. Any change in
17 parole plans should be brought to our attention.
18 We'll reach a decision today and inform you
19 whether or not we find you suitable for parole
20 and the reasons for our decision. If found
21 suitable for parole, the length of your
22 confinement will be explained to you.
23 This Hearing is going to be conducted in two
24 phases. I'll discuss briefly the crime you were
25 committed for, your prior criminal and social
26 history, your parole plans, any letters of
27 support or opposition. Commissioner Blonien

1 will discuss with you your progress since your
2 commitment, your counselor's report and your
3 psychological report. Once that's concluded,
4 the Commissioners and your attorney will be
5 given an opportunity to ask you questions.
6 Before we recess for deliberations, your
7 attorney and you will be given an opportunity to
8 make a final statement regarding your parole
9 suitability. Your statement should be directed
10 to why you feel you're suitable for parole.
11 We'll then recess, clear the room and
12 deliberate. Once we've completed our
13 deliberations, we'll resume the hearing and
14 announce our decision. The California Code of
15 Regulations states regardless of time served, a
16 life inmate shall be found unsuitable for and
17 denied parole if in the judgment of the Panel,
18 the inmate would pose an unreasonable risk of
19 danger to society if released from prison.
20 Mr. Luther, you have certain rights. Those
21 rights include a timely notice of this Hearing,
22 the right to review your Central File, and the
23 right to present relevant documents. Have these
24 rights been met?

25 **ATTORNEY RUTLEDGE:** Yes.

26 **PRESIDING COMMISSIONER GARNER:** Thank
27 you. You also have the right to be heard by an

1 impartial Panel. Today myself and Commissioner
2 Blonien will be your Panel. Any objections to
3 the Panel?

4 **ATTORNEY RUTLEDGE:** None.

5 **PRESIDING COMMISSIONER GARNER:** Thank
6 you. You'll receive a copy of our written
7 tentative decision today. That decision is
8 subject to review by the Decision Review Unit.
9 It is also subject to review by the Governor.
10 It will become effective within 120 days and a
11 copy of the tentative decision and a copy of the
12 transcript will be sent to you.
13 Mr. Luther, you know, in May of 2204, they
14 changed the appeal process. Previously, you
15 could appeal Panel actions to the Board, now you
16 have to go to the courts (indiscernible).

17 **INMATE LUTHER:** Uh, no.

18 **PRESIDING COMMISSIONER GARNER:** Okay.
19 Information concerning that you can get from
20 your counselor or the prison law library
21 directly. It's just essentially -- it was a
22 change in the appeal process.
23 You're not required to admit your offense or
24 discuss your offense if you do not wish to do
25 so. However, this Panel does accept as true the
26 findings of the court and you're invited to
27 discuss the facts and circumstances of the

1 offense if your desire. The Board will review
2 and consider any prior statement you've made
3 regarding the offense in determining your
4 suitability for parole.

5 And at this time, I'm going to ask Commissioner
6 Blonien if there's confidential material in your
7 file and if we'll be using it today?

8 **DEPUTY COMMISSIONER BLONIEN:** There's
9 none that we'll be using today.

10 **PRESIDING COMMISSIONER GARNER:** Okay,
11 thank you. Ms. Rutledge, Hearing Checklist over
12 there somewhere?

13 **ATTORNEY RUTLEDGE:** Yes, we have --

14 **PRESIDING COMMISSIONER GARNER:** Other
15 than the documents that you (indiscernible).
16 Okay. Any additional documents to be submitted
17 today?

18 **ATTORNEY RUTLEDGE:** Mr. Luther has a few
19 things that we believe are on file with the
20 Board that weren't put in my file so we'll --
21 get to the letters, we may need to submit some
22 or do you want them now?

23 **DEPUTY COMMISSIONER BLONIEN:** Any
24 chronos?

25 **INMATE LUTHER:** I believe it was in there
26 last time. It's the ideal -- my certification,
27 lead abatement certification.

1 DEPUTY COMMISSIONER BLONIEN: Yeah.

2 ATTORNEY RUTLEDGE: (indiscernible)

3 INMATE LUTHER: Yeah, it's -- it's a lead
4 abatement.

5 DEPUTY COMMISSIONER BLONIEN: Yeah, I
6 have that.

7 INMATE LUTHER: Yeah, I --

8 ATTORNEY RUTLEDGE: I don't think it's in
9 this (indiscernible)

10 PRESIDING COMMISSIONER GARNER: Okay. If
11 you find that we don't have something, when we
12 get there, just let us know. Any preliminary
13 objections.

14 ATTORNEY RUTLEDGE: None.

15 PRESIDING COMMISSIONER GARNER: Okay.
16 And will Mr. Luther be speaking with the Panel
17 today?

18 ATTORNEY RUTLEDGE: He will (sic) be
19 discussing the commitment offense. He's
20 discussed it in detail in a previous transcript
21 and other Hearings, but he will talk to the
22 Panel about other issues.

23 PRESIDING COMMISSIONER GARNER: Okay.
24 Raise your right hand Mr. Luther? Do you
25 solemnly swear the testimony you give at this
26 Hearing will be the truth, the whole truth and
27 nothing but the truth?

1 **INMATE LUTHER:** I do.

2 **PRESIDING COMMISSIONER GARNER:** Thank
3 you. Okay. So much as Mr. Luther has opted not
4 -- I'm going to go ahead and read the summary of
5 the crime, and I'll be reading from the August
6 2001 Board report since it's referenced back
7 from a more recent reports.

8 December 24, 1990 at approximately 5:25 p.m., a
9 California Highway Patrol Unit was dispatched to
10 East Haroling Avenue, and that's spelled H-A-R-
11 O-L-I-N-G, in Oildale, California, in reference
12 to a possible injury accident. Upon arrival,
13 Officer Taggert, T-A-G-G-E-R-T, contacted
14 suspect Luther, who advised he had hit victim
15 Obert, O-B-E-R-T, with a gun, then placed the
16 gun outside on a shelf. While speaking with
17 Luther, Officer Taggert observed that the
18 suspect was quite upset and crying.
19 Kern County Deputy Smallwood, S-M-A-L-L-W-O-O-D,
20 interviewed suspect Luther, who stated while
21 lying on his bed, victim Obert arrived at the
22 residence uninvited. Luther grabbed the gun
23 that he had had for approximately nine years,
24 showed the victim the gun and told him to get
25 out. Luther advised that the victim overcharged
26 him in a combative manner and to defend himself,
27 he struck Obert with the gun. He indicated

1 Obert fell to the floor and he called 911 for
2 emergency. He then threw the gun in the patio
3 area of the residence where Officer Taggart
4 later located it. Suspect Luther was placed in
5 custody and transported to the Sheriff's
6 Department for questioning. Luther was advised
7 of his rights, which he declined to waive.
8 However, he made the statement to the Deputy
9 that victim Obert, quote, bought my life with
10 drugs, end quote.
11 While in custody, he requested to go outside for
12 fresh air as he had drank a pint of peppermint
13 Schnapps just prior to the incident and needed
14 fresh air. He was allowed to go outside in the
15 company of the Deputy, then returned into the
16 interview room where he fell asleep until the
17 arrival of investigative detectives. He then
18 made unsolicited statements to the detectives
19 such as, quote, it was an accident. All I did
20 was hit him with the gun. I didn't shoot him.
21 I slapped him, end quote. Quote, I didn't like
22 the guy. He's been fuckin' with my girlfriend,
23 Tesha, T-E-S-H-A, Hill, end quote. He was again
24 advised of his Miranda rights and that
25 (indiscernible) to answer questions. He stated
26 that one of his children had alerted him that
27 Obert had come into the residence. Upon seeing

1 Obert, he told him to, quote, get out of my
2 house, end quote. He then told detectives that
3 he'd owed the victim \$200 for drugs and that
4 Obert had possibly come to the residence to
5 collect the debt. Luther was advised that he
6 was under arrest for murder and transported to
7 Kern County Jail.

8 Victim Obert was transported to Memorial
9 Hospital where he was determined to be dead. A
10 baggie containing 14.51 grams of marijuana and a
11 baggie of 1.71 grams of a chunky substance were
12 taken from the victim's pants. Also found in
13 the victim's wallet was \$1,431.23 in currency
14 and two quote, pay and owe sheets, end quote.

15 Cause of death was from a gunshot wound to the
16 head that entered Obert's body in the back,
17 right side of the neck above the hair line.

18 Obert also sustained blunt force trauma to the
19 right side of his face, another in front of the
20 face and a third causing bruising to the left
21 eye. Obert was found to have a high
22 concentration of methamphetamine in his blood at
23 the time of the death.

24 Since we don't have an indication of any
25 interest in discussing this, I'm going to go
26 ahead and read from the same report, the
27 prisoner's version that was given at that time.

1 Inmate Luther was interviewed on June 1, 2001,
2 regarding the incident. Inmate Luther gave the
3 following account. On 12/24/90, December 24,
4 1990, Luther left his residence for the purpose
5 to purchase, quote, some weed, end quote. He
6 stopped at a liquor store and bought a pint of
7 peppermint Schnapps then drove to a friend's
8 house where he smoked a joint. He returned to
9 his residence.

10 At approximately 5:00 p.m., the victim came into
11 Luther's residence and walked into the bedroom.
12 Luther stated, quote, I told him to get out,
13 then reached for my gun when he went into the
14 living room. He then came back in, I took the
15 gun and pointed it up to the ceiling and told
16 him to get the fuck out of my house, end quote.
17 Luther claims to have struck the victim across
18 the face with an open hand while holding the gun
19 then grasped the gun, quote, that's when the gun
20 went off, end quote. He stated he thought the
21 gun had knocked the victim unconscious, that he
22 wasn't aware Luther was shot until his friend,
23 Roussel, R-O-U-S-S-E-L, rolled the victim over.
24 He then called 911 and became panicked, emptied
25 the gun and tossed it into the patio area.
26 When asked why he felt he was in danger when the
27 victim came into his home, Luther explained that

1 they had had animosity between them stemming
2 from a breakup with a girlfriend, who had then
3 become involved with victim Obert while living
4 with Luther. Additionally, Luther admitted to
5 have purchased methamphetamines from the victim
6 and was in debt \$200 to Obert. Luther told this
7 writer upon learning his girlfriend was involved
8 with the victim, he broke off the relationship.
9 A few days later she returned in an attempt to
10 reconcile with him. He stated he told her to
11 leave. She left slamming the door on the way
12 out. He then stated he kicked her vehicle
13 because she angered him by slamming the door.
14 He also admitted to knocking her glasses to the
15 ground and then stepping on them, breaking them.
16 It is speculated she may have come to -- she may
17 have told the victim about this behavior causing
18 Obert to come uninvited to his home. He also
19 disclosed he owed the victim money for drugs and
20 that after this incidence occurred, he told the
21 victim he was not going to pay him. When asked
22 by the writing why he made the decision, he
23 responded, he'd lost trust in Obert. He stated
24 that he told the dealer he would pay him but not
25 the victim, quote, because there was no trust
26 thing. He was going behind my back, end quote.
27 Luther stated that his defense attorney didn't

1 want him to disclose any of it though because of
2 the defense strategy. He further stated that he
3 regretted his decision to listen to her, that he
4 disclosed more in this interview than he did at
5 trial. Inmate Luther expressed regret and
6 remorse for his actions. He stated, quote, I
7 never meant to hurt or kill nobody. I would
8 never -- I would never own a gun again even if I
9 could, end quote. Quote, the mistake I made was
10 picking up the gun. I could have resolved it in
11 a different fashion where we would not have had
12 this outcome. His family, his children have all
13 been hurt just as my family and kids have been
14 hurt, end quote. He expressed that he was,
15 quote, flabbergasted that I was convicted, end
16 quote, because the victim, quote, was the
17 aggressor, end quote.

18 And so far as your prior criminal record, looks
19 like it was alcohol related, drunk driving in
20 '78 and you got acquitted.

21 **INMATE LUTHER:** Yeah, I was 18 years old.

22 **PRESIDING COMMISSIONER GARNER:** Okay. In
23 January of '89, you were arrested and convicted
24 of driving under the influence of alcohol.
25 April of '89, arrested and convicted of drunk
26 driving again, and you were sentenced to three
27 years court probation, 30 days in jail, and 18

1 months suspended license. And then in June of
2 '89, arrested for Vehicle Code violations, and
3 in December of '90, the arrest for this
4 particular crime. And for the record, no
5 juvenile record, is that correct?

6 **INMATE LUTHER:** Yeah.

7 **PRESIDING COMMISSIONER GARNER:** Okay,
8 thank you. So far as your personal factors, you
9 were born to parents George and Edith Luther of
10 Bakersfield?

11 **INMATE LUTHER:** Yes.

12 **PRESIDING COMMISSIONER GARNER:** Okay.
13 You're the third child and you have a brother
14 and a sister.

15 **INMATE LUTHER:** Yes.

16 **PRESIDING COMMISSIONER GARNER:** Who's the
17 oldest?

18 **INMATE LUTHER:** My sister.

19 **PRESIDING COMMISSIONER GARNER:** Your
20 sister.

21 **INMATE LUTHER:** She's now a teacher
22 (indiscernible)

23 **PRESIDING COMMISSIONER GARNER:** Okay, and
24 what's your brother doing?

25 **INMATE LUTHER:** He's on his second
26 career. He was a plumber pipe fitter and he
27 retired from the Union, and took a journeyman

1 card in electrician. So, he's still working as
2 an electrician and (indiscernible)

3 **PRESIDING COMMISSIONER GARNER:** And you
4 say your sister's a teacher?

5 **INMATE LUTHER:** Yeah, my sister she --
6 she's in her old job. She had to go in and have
7 surgery for carpal tunnel, and in doing that,
8 she already had two years of college, so she --
9 they retrained -- the State retrained her for a
10 new job. So, she went back to school and became
11 a teacher (indiscernible)

12 **PRESIDING COMMISSIONER GARNER:** They
13 still in the Bakersfield area?

14 **INMATE LUTHER:** Yes.

15 **PRESIDING COMMISSIONER GARNER:** Okay.
16 How about your folks? They still there?

17 **INMATE LUTHER:** Yeah, they -- my mom and
18 dad live in the house that I was building when
19 this happened, and my sister lives in the house
20 that I was living in at the time.

21 **PRESIDING COMMISSIONER GARNER:** Okay.
22 And you completed high school in 1977,
23 graduating from North High School?

24 **INMATE LUTHER:** Yes.

25 **PRESIDING COMMISSIONER GARNER:** And began
26 to use drugs at 17. Used cocaine on an
27 occasional basis and crank for about three to

1 six months, and admitted to the use of marijuana
2 for years on an average of three times a week?

3 INMATE LUTHER: Yes.

4 PRESIDING COMMISSIONER GARNER: What
5 first got you into the drugs at 17?

6 INMATE LUTHER: The other kids around
7 said that you -- would never again.

8 PRESIDING COMMISSIONER GARNER: You were
9 with others when you used drugs?

10 INMATE LUTHER: Yes.

11 PRESIDING COMMISSIONER GARNER: Did you
12 ever use them when you were by yourself?

13 INMATE LUTHER: Yeah.

14 PRESIDING COMMISSIONER GARNER: Alcohol
15 come into play at this time?

16 INMATE LUTHER: Young age?

17 PRESIDING COMMISSIONER GARNER: About
18 when did you start drinking?

19 INMATE LUTHER: Yeah, just young, like --

20 PRESIDING COMMISSIONER GARNER: How did
21 you pay for your drugs and alcohol?

22 INMATE LUTHER: I worked. I've always
23 worked since I was young. My dad did instill
24 that in me. At 12 years old, me and my brother
25 roofed my dad's house. So, I knew how to roof a
26 house at 12 years old.

27 PRESIDING COMMISSIONER GARNER: Okay.

1 You married Elaine Webb.

2 **INMATE LUTHER:** I married Elaine Brewton.

3 The same day this happened, the tragic accident
4 happened, she got remarried to Mike Webb.

5 **PRESIDING COMMISSIONER GARNER:** Okay.

6 So, at the time you married --

7 **INMATE LUTHER:** Brewton, B-R-E-W-T-O-N.

8 **PRESIDING COMMISSIONER GARNER:** Okay.

9 And divorced eight years later. Three children.

10 **INMATE LUTHER:** Three children, and I had
11 custody at the time.

12 **PRESIDING COMMISSIONER GARNER:** At the
13 time of the offense. And how old are the
14 children now?

15 **INMATE LUTHER:** My oldest is 26, that's
16 my daughter, the oldest, Crystal. Russell, my
17 son, is 25, and Cody, my youngest, is 23.

18 **PRESIDING COMMISSIONER GARNER:** They all
19 doing okay?

20 **INMATE LUTHER:** My oldest, she's doing
21 real good, and my son, he's a plumber pipe
22 fitter now. He just graduated from college and
23 began journeyman. And my youngest is sort of
24 struggling. I got a granddaughter by her also,
25 and a grandson by my oldest, and a granddaughter
26 by my youngest.

27 **PRESIDING COMMISSIONER GARNER:** What's

1 your youngest struggle?

2 **INMATE LUTHER:** Money and my ex-wife,
3 Elaine (indiscernible). She lives with my
4 youngest and her boyfriend, and they kind of
5 said they wanted me to come home before they got
6 married. And I told them that probably -- I'd
7 just as soon see them get married right away,
8 but they're just -- they're struggling and money
9 situations. So, my ex lives -- they all live
10 together -- pay the bills.

11 **PRESIDING COMMISSIONER GARNER:**
12 Employment history consisted of sporadic general
13 labor work for Lyle Schwebel, S-C-H-W-E-B-E-L.
14 It's a plastering company between '87 and '89.

15 **INMATE LUTHER:** That was after I had got
16 custody of my kids for the fact that I was a
17 teamster and kind of hard to do jobs driving
18 when the driving consists of so many hours --
19 with the kids so --

20 **PRESIDING COMMISSIONER GARNER:** Okay.
21 And you also worked for Elam, E-L-A-M, Tractor
22 Rental as a truck driver for approximately six
23 months in '88.

24 **INMATE LUTHER:** Yeah, that was hauling
25 gold ore.

26 **PRESIDING COMMISSIONER GARNER:** Okay.
27 And you received AFDC benefits until after

1 September of '90.

2 **INMATE LUTHER:** That was after I had my
3 knee operated on.

4 **PRESIDING COMMISSIONER GARNER:** You
5 earned a salary remodeling your father's home in
6 '90 and '91.

7 **INMATE LUTHER:** That was when I was
8 building the house, connected to the house that
9 I was living in.

10 **PRESIDING COMMISSIONER GARNER:** Okay.
11 So, you did an addition.

12 **INMATE LUTHER:** It was -- the house, it
13 was on a property burned down and there was a
14 studio apartment in the garage, and my dad
15 bought the place and I remodeled the studio
16 apartment garage and lived in it, and then I
17 added on the complete house connected to it,
18 two-story house.

19 **PRESIDING COMMISSIONER GARNER:** Okay.

20 **INMATE LUTHER:** With a two-car garage.

21 **PRESIDING COMMISSIONER GARNER:** Okay.

22 And indicated your parents are good people and
23 they've been supportive of you.

24 **INMATE LUTHER:** Yes.

25 **PRESIDING COMMISSIONER GARNER:** When you
26 were growing up, was there any alcohol use in
27 the home, your parents?

1 **INMATE LUTHER:** My dad's always been a
2 beer drinker but just never got out of control
3 though.

4 **PRESIDING COMMISSIONER GARNER:** Okay.
5 Any abuse in the house?

6 **INMATE LUTHER:** No. I think the last
7 time my dad ever laid a hand on me was when I
8 was eight years old.

9 **PRESIDING COMMISSIONER GARNER:** Do you
10 have any childhood illnesses? Hospitalizations?

11 **INMATE LUTHER:** No. I had bob wire -- I
12 was prone to bob wire, go to the hospital to get
13 stitched up. I rode horses and motorcycles and
14 had nothing of any significance.

15 **PRESIDING COMMISSIONER GARNER:** And what
16 were you doing at the time of this offense work
17 wise?

18 **INMATE LUTHER:** I was just basically
19 working for my dad building on the house.

20 **PRESIDING COMMISSIONER GARNER:** Uh huh.
21 Okay, this -- do you get visits from your
22 family?

23 **INMATE LUTHER:** You know, so far and the
24 money is -- I do but they're not real regular.

25 **PRESIDING COMMISSIONER GARNER:** Okay.
26 Who do you stay in contact with the most?

27 **INMATE LUTHER:** My mother.

1 **PRESIDING COMMISSIONER GARNER:** Mother.

2 **INMATE LUTHER:** My dad's wants me to
3 always, you know -- otherwise, if I don't call
4 mom, she gets to feeling bad.

5 **PRESIDING COMMISSIONER GARNER:** Okay. So
6 far as your parole plans, you'd be employed back
7 -- is it Lyle Schwebel Plastering?

8 **INMATE LUTHER:** Yes. And of the off
9 time, building another home.

10 **PRESIDING COMMISSIONER GARNER:** Okay. So
11 far as community resources, you intend to attend
12 church regularly. Although he attends AA
13 meetings, doubts that he would attend upon
14 release, because he believes he gains far more
15 from his belief in God, therefore, his plan is
16 to enhance his church involvement upon release.
17 And I don't have any letters in support of
18 employment or anything.

19 **INMATE LUTHER:** All the old ones.

20 **ATTORNEY RUTLEDGE:** In the C File, there
21 were numerous letters of support as far as his
22 last Hearing, offers of employment -- from your
23 parents. I have a list here. I noted his Aunt
24 May -- Aunt Mary, Debbie Luther.

25 **INMATE LUTHER:** My Aunt Mary --

26 **ATTORNEY RUTLEDGE:** Oh, all three of his
27 children wrote letters. They wrote very

1 poignant letters about how they've kept in
2 contact with their father and how much they'd
3 like to see him again, and they know it was
4 wrong, basically the same thing.

5 **PRESIDING COMMISSIONER GARNER:** Okay.
6 What I'll do is during deliberations, I'll go
7 through the file and get those and note them.

8 **ATTORNEY RUTLEDGE:** And that's why --
9 okay, and his ex-wife, Elaine Brewton submitted
10 a letter as well.

11 **PRESIDING COMMISSIONER GARNER:** Okay.
12 Well, we'll get all those in --

13 **INMATE LUTHER:** My employer --

14 **ATTORNEY RUTLEDGE:** The employer--

15 **INMATE LUTHER:** -- friends of the family,
16 Ralph (indiscernible)

17 **ATTORNEY RUTLEDGE:** He's a plasterer.

18 **INMATE LUTHER:** Yes, it's his company.
19 His son's running the company now.

20 **ATTORNEY RUTLEDGE:** Okay.

21 **INMATE LUTHER:** That's who I would work
22 for.

23 **PRESIDING COMMISSIONER GARNER:** Okay.
24 I'll cover those. Okay, we did send out the
25 3042 Notices. Those go to all the agencies that
26 had some direct involvement in your
27 apprehension, prosecution, the trial, the

1 defense, and for the record, we have received no
2 responses from any of them.

3 And now if I could get you to devote your
4 attention to Commissioner Blonien, who's going
5 to discuss your post-conviction factors.

6 **DEPUTY COMMISSIONER BLONIEN:** So, Mr.
7 Luther, this is your ~~first Subsequent Hearing.~~
8 Your last appearance before the Board was
9 4/29/02 and the decision was for a three-year
10 denial. And the Panel recommended that you
11 attend self-help and therapy if available,
12 remain disciplinary free and complete a
13 vocational trade if possible. You did come
14 before the Board in September, but it was
15 postponed for a new psych report, which we have
16 received, a report from Dr. Macomber dated
17 12/24/05. I've also reviewed your counselor's
18 report by Counselor Derdesoto, D-E-R-D-E-S-O-T-
19 O, dated 12/14/05.

20 Your current custody level is Medium A and your
21 classification score is 19, which lowest
22 possible for CDC inmates. Did you review these?

23 **INMATE LUTHER:** Yes.

24 **DEPUTY COMMISSIONER BLONIEN:** You got a
25 copy of the psych report.

26 **INMATE LUTHER:** Yes, I did.

27 **DEPUTY COMMISSIONER BLONIEN:** You got it

1 before we did. And you got a copy of your
2 counselor's report.

3 **INMATE LUTHER:** Yes, and the original
4 counselor's report is marked as (indiscernible)

5 **DEPUTY COMMISSIONER BLONIEN:** Updated
6 one.

7 **INMATE LUTHER:** Addendum is Derdesoto.

8 **DEPUTY COMMISSIONER BLONIEN:** And did you
9 go through your C File?

10 **INMATE LUTHER:** No. I -- really nothing
11 new that I knew of.

12 **DEPUTY COMMISSIONER BLONIEN:** Well, it's
13 always a good idea. They get bigger and you get
14 all these little pieces of paper, and
15 (indiscernible) you want to, here's the one
16 that'll be gone. So, it always good to keep
17 track of your C File, to copy the important
18 things yourself. It's a was to do business.
19 In looking over your disciplinary record, you
20 have not had one 115 in your entire prison stay.
21 You've had two 128s, one in 1996 and one in
22 2000. Did everybody in IDL get that one?

23 **INMATE LUTHER:** Everybody. I'm a tool
24 man. I'm always down on the floor with the
25 tools.

26 **DEPUTY COMMISSIONER BLONIEN:** And it had
27 to do with altering doors.

1 **INMATE LUTHER:** I'm always putting screws
2 in a door so people can hang their shower bags
3 on the inside of the door. And they wrote us
4 all an information chrono and had to go back and
5 taken them all out and weld them up.

6 **DEPUTY COMMISSIONER BLONIEN:** Yeah, I
7 figured that.

8 **INMATE LUTHER:** Repaint.

9 **DEPUTY COMMISSIONER BLONIEN:** That's what
10 it looked like. You are a worker, you know,
11 since you've been in here, you've been a worker,
12 and I was interested that you said when you were
13 on AFDC, it was because you were disabled for a
14 while.

15 **INMATE LUTHER:** Cause of my knee.

16 **DEPUTY COMMISSIONER BLONIEN:** Yeah.
17 Cause in here it just shows that you know how to
18 work. You were a PIA machine operator. You
19 were in Textiles. You've been a part of IDL
20 until the program ended for lack of funding.

21 **INMATE LUTHER:** I just went back to work.
22 Out here they only got work for a little while
23 so I --

24 **DEPUTY COMMISSIONER BLONIEN:** I know, the
25 Governor's got a new budget out there. The --
26 you're an educational clerk now?

27 **INMATE LUTHER:** No, I'm just a porter.

1 DEPUTY COMMISSIONER BLONIEN: You're a
2 porter.

3 INMATE LUTHER: (indiscernible)

4 DEPUTY COMMISSIONER BLONIEN: So what are
5 you doing Wednesday nights?

6 INMATE LUTHER: Just not really nothing
7 on Wednesday nights.

8 DEPUTY COMMISSIONER BLONIEN: Cause I was
9 wondering, it shows that AA was on Wednesday
10 nights for a long time. And you're not going to
11 AA any more?

12 INMATE LUTHER: No, I just basically read
13 the Bible. And my faith is in Jesus Christ.
14 He's the one that took these infirmities away
15 from me. And me, my feelings, going back to man
16 to ask for help -- the Good Lord has already
17 taken from me, is -- I work my faith in that and
18 the Good Lord and he already took that away from
19 me.

20 DEPUTY COMMISSIONER BLONIEN: I see
21 nothing --

22 INMATE LUTHER: I feel it's better to
23 read the Bible, which I believe is the best
24 self-help book in the world.

25 DEPUTY COMMISSIONER BLONIEN: I see
26 nothing wrong with that except one thing. Your
27 alcohol and drug problem, what was it a pint of

1 peppermint Schnapps, that much?

2 **INMATE LUTHER:** I didn't drink the whole
3 pint. I drank --

4 **DEPUTY COMMISSIONER BLONIEN:** Thank God.

5 **INMATE LUTHER:** No, I had a few drinks
6 with the people where I went (indiscernible -
7 voice over)

8 **DEPUTY COMMISSIONER BLONIEN:** By anyway,
9 the point is that it was a part of your
10 commitment offense.

11 **INMATE LUTHER:** Yeah.

12 **DEPUTY COMMISSIONER BLONIEN:** And getting
13 rid of a major problem like that takes a lot of
14 support. And having support through your church
15 is excellent, but the --

16 **INMATE LUTHER:** Quit smoking, I don't
17 cuss, cussing's hard --

18 **DEPUTY COMMISSIONER BLONIEN:** You're not
19 going to fly away on me here are you?

20 **INMATE LUTHER:** No, but cussing's --
21 that's cussing, try to -- that takes a period of
22 time. That don't just stop all at once. I
23 don't cuss and that is -- that's probably one of
24 the hardest things, you know, cause I quit
25 smoking cold turkey, and that's supposed to be
26 harder than heroine they say.

27 **DEPUTY COMMISSIONER BLONIEN:** Really?

1 Anyway, you've misdirected my statement, but I
2 am glad you quit smoking. You look healthy.
3 Saying that you're done with it and saying that
4 you're dealing with this major problem that you
5 had in your life through your religion is
6 commendable. But you're released into the
7 community, there are many stressors in the
8 institution, and we all know that, but there are
9 many stressors in the community, and knowing
10 that you have a significant number of tools and
11 places to help you, because it's easy to slip, I
12 mean, once you get out. So, when we look at AA,
13 we look at it as one tool. When we look at you
14 -- commitment to church and the value of the
15 Bible, that's another tool. And you were in AA
16 since 1999 to '02, and it is a religious-based
17 help. So, that's my point there.
18 You do anything else in the arena of self-help
19 in the institution?

20 **INMATE LUTHER:** No, just --

21 **DEPUTY COMMISSIONER BLONIEN:** Read the
22 Bible.

23 **INMATE LUTHER:** I try to work out and
24 stay healthy so upon release, I'm still able to
25 go to work and I read the Bible every day. And
26 I have a -- I live with a Christian brother and
27 actually I have lived with him almost ten years,

1 the same cell, same person.

2 **DEPUTY COMMISSIONER BLONIEN:** My advise
3 is, there's always more you can do. And we
4 understand that services and programs aren't
5 always available, but documenting what you do on
6 your own is good.

7 **INMATE LUTHER:** I just -- one thing is I
8 know for a fact in my heard, I'll never do drugs
9 or alcohol again for the fact that it's -- I
10 doubt if you jumped out of an airplane and the
11 parachute didn't open, would you go and do it
12 again? The same difference. It took 15 years
13 from my life. I hurt all kinds of people and
14 there's no way that I'd ever go back to do it
15 again.

16 **DEPUTY COMMISSIONER BLONIEN:** You also
17 did Breaking Barriers. That was a while ago,
18 huh?

19 **INMATE LUTHER:** Oh, that was the -- I
20 can't remember the name of it. It was the group
21 down in -- they headed -- in the other chapel
22 (indiscernible) Chapel. It was, I can't
23 remember the name of it. I got a certificate
24 for it.

25 **DEPUTY COMMISSIONER BLONIEN:** Yeah,
26 Breaking Barriers.

27 **INMATE LUTHER:** Yeah.

1 **DEPUTY COMMISSIONER BLONIEN:** Do you
2 participate in Protestant Chapel? Or what
3 chapel do you participate in?

4 **INMATE LUTHER:** Mostly -- I have one down
5 there, but most of the time, it's just for the
6 people I know on the yard. Anybody that I could
7 help out.

8 **DEPUTY COMMISSIONER BLONIEN:** And --
9 well, do you have a specific church you're going
10 to go to?

11 **INMATE LUTHER:** Not really. I'd just --
12 I'd have to go find out who is more in line with
13 -- I like the way that Dr. David Jeremiah and
14 Charles Stanley, the way they see -- and it's
15 more like a Bible study, teaching you rather
16 than getting (indiscernible) just preaching at
17 you.

18 **DEPUTY COMMISSIONER BLONIEN:** But you
19 haven't researched that yet?

20 **INMATE LUTHER:** No. Friends of my mom,
21 they actually come to see me in county jail,
22 that she used to work with, and I was going to
23 go first, go see what their church was like.

24 **DEPUTY COMMISSIONER BLONIEN:** In terms of
25 the work you do, you have gained skills, and
26 there is the letter from Kate Clayton, who notes
27 that you have a lead worker's certificate --

1 **INMATE LUTHER:** Led.

2 **DEPUTY COMMISSIONER BLONIEN:** -- led
3 worker's certificate with Department of Health
4 Services. (indiscernible) certificate is good
5 for one year, and you must complete
6 (indiscernible) approved continuing education to
7 renew it.

8 **INMATE LUTHER:** I think they renewed it
9 one time other than the original.

10 **DEPUTY COMMISSIONER BLONIEN:** Uh huh.

11 **INMATE LUTHER:** But -- you want to look
12 at it.

13 **DEPUTY COMMISSIONER BLONIEN:** No, I think
14 I've got it here.

15 **INMATE LUTHER:** I think they renewed it
16 one time during the period we was doing the
17 doors.

18 **DEPUTY COMMISSIONER BLONIEN:** And you
19 have positive chronos, laudatory chronos about
20 your position in inmate day labor, Correctional
21 Officer Salas, S-A-L-A-S, noted that you've been
22 involved in various projects and that you're
23 immediately responsive to any request. That you
24 virtually are always in good humor and you're
25 constantly ready to volunteer at a moment's
26 notice, and that you extend your eagerness to
27 help equally to inmates and staff alike. You

1 communicate well with both staff and inmates,
2 and that you're respected by all, and he is
3 confident that you could make a good transition
4 into society. And he wrote you two memos of
5 support. And then there were the memos from AA
6 from '99 to '02.

7 What are you reading right now? Besides the
8 Bible?

9 **INMATE LUTHER:** I just finished a
10 (indiscernible) novel.

11 **DEPUTY COMMISSIONER BLONIEN:** What?

12 **INMATE LUTHER:** Anna Lee Waldo's Prairie.
13 It was on Charles (indiscernible - name). It
14 was a -- one of the first people to start what
15 we now know as the rodeos.

16 **DEPUTY COMMISSIONER BLONIEN:** Oh, that
17 would have been interesting.

18 **INMATE LUTHER:** (indiscernible)

19 **DEPUTY COMMISSIONER BLONIEN:** In terms of
20 your psych report, the doctor noted that you
21 have a very strong work ethic and spent some
22 time outlining your work history. And that --
23 it says, you're not actively involved in drug
24 abuse at the time of the commitment offense, is
25 that true?

26 **INMATE LUTHER:** At the time of the
27 offense, well, I smoked a joint.

1 **DEPUTY COMMISSIONER BLONNIEN:** Well, yeah,
2 I think that counts.

3 **INMATE LUTHER:** Smoked a joint and I
4 didn't drink a whole bottle of peppermint
5 Schnapps but I shared it with the other people
6 that was there.

7 **DEPUTY COMMISSIONER BLONNIEN:** That would
8 be tough wouldn't it. That you've been active
9 in Alcoholics Anonymous for several years, but
10 you're currently not because you're attending
11 and studying the Principles of the Overcomers
12 Program. We didn't talk about that.

13 **INMATE LUTHER:** I forgot to mention that.
14 I do read that. It's a newsletter. It's
15 Overcomers magazine, or not magazine but
16 newsletter.

17 **DEPUTY COMMISSIONER BLONNIEN:** Overcoming
18 what?

19 **INMATE LUTHER:** It's a Christian based
20 AA. The same guidelines as basically as AA but
21 it's all scripture. I like scripture.

22 **DEPUTY COMMISSIONER BLONNIEN:** When you
23 were in AA, did you work through the steps?

24 **INMATE LUTHER:** I basically had trouble
25 just -- I have trouble just memorizing things.
26 I couldn't --

27 **DEPUTY COMMISSIONER BLONNIEN:** Well, a lot

1 of people do.

2 **INMATE LUTHER:** I couldn't tell you a
3 whole song, sing a whole song. I do -- I can
4 recite the 29 books of the New Testament from
5 front to back. But --

6 **DEPUTY COMMISSIONER BLONIEN:** I'm not
7 going to test you. I couldn't so.

8 **INMATE LUTHER:** Matthew, Bartlet, John --

9 **DEPUTY COMMISSIONER BLONIEN:** He notes
10 that you've been disciplinary free and that
11 that's evidence of your full commitment and your
12 self-control. That there's no evidence of
13 alcohol abuse during the current diagnostic.
14 So, under Access I, he says that there's no
15 contributory clinical disorder, usually they
16 would say alcohol or drug dependency in
17 remission, institutional remission. That he
18 finds no mental health issues with you, so
19 there's no personality disorder under Access II.
20 And he found no physical disorders under Access
21 III. That's good. He gave you a Global
22 Assessment Functioning score of 90, which is the
23 highest possible inmate and individual in a
24 community. That, he notes that you accept full
25 responsibility for your actions, that if you'd
26 not been involved in negative behavior, this
27 offense would never have occurred. That in

1 considering your potential for dangerous
2 behavior in the institution, inmate Luther
3 remains entirely disciplinary free. And that
4 you've changed a great deal in the last 15
5 years. You've grown in self-awareness, maturity
6 and positive direction in his life and self-
7 control. As a result, your potential for
8 dangerous behavior is ~~definitely below average~~
9 ~~in comparison to other inmates.~~ And in
10 considering your potential for dangerous
11 behavior if released to the community, he
12 administers the level of service inventory
13 revised testing, and that your score placed you
14 at the 3.4 cumulative percentile in comparison
15 to other prison inmates, which means that you
16 would do 96 percent better than any other inmate
17 if paroled. And this would indicate that your
18 potential for dangerous behavior in the
19 community is ~~no greater than that of the average~~
20 ~~citizen.~~ In fact, based upon his life changes,
21 ~~it is below average in comparison to the average~~
22 ~~citizen.~~ Do you agree with that?

23 **INMATE LUTHER:** Yes. Average citizen
24 don't know the trial that I've went through.
25 They'd be more prone to pick up a gun, where no
26 matter what the situation, there's no way I
27 will.

1 DEPUTY COMMISSIONER BLONNIEN: Well, with
2 that, I'm going to turn it back to the Chair.

3 PRESIDING COMMISSIONER GARNER: Okay. I
4 don't have any other questions. Do you have any
5 follow-up?

6 DEPUTY COMMISSIONER BLONNIEN: No.

7 PRESIDING COMMISSIONER GARNER: Okay, Ms.
8 Rutledge, any question?

9 ATTORNEY RUTLEDGE: Yes. Mr. Luther, you
10 indicated that the Bible is your self-help.
11 Would you say the Ten Commandments are your
12 Steps for living?

13 INMATE LUTHER: The New Testament covers
14 the Ten Commandments by two steps, thou shalt
15 love thy God with all thy heart, all thy mind
16 and all thy soul, and love thyself as thy -- and
17 then second is to love thyself as thy neighbor.
18 Or love thy neighbor as thyself I should say.
19 That's the two that covers the whole New -- Old
20 Testament.

21 ATTORNEY RUTLEDGE: Like the Ten
22 Commandments.

23 INMATE LUTHER: The Ten Commandments.

24 ATTORNEY RUTLEDGE: All right. And I
25 wanted to note too, are you aware -- isn't it
26 true that Dr. Bob and Bill W., the founders of
27 AA were Christians, that they based the 12 Steps

1 on the Bible?

2 INMATE LUTHER: Yes.

3 ATTORNEY RUTLEDGE: Okay. And do you
4 attend chapel? Oh, maybe we talked about that.
5 Is there a group of Christian men that you spend
6 your time with improving?

7 INMATE LUTHER: Yeah.

8 ATTORNEY RUTLEDGE: Do you avoid being
9 around people that -- you stay away from the --

10 INMATE LUTHER: People that do drugs?

11 ATTORNEY RUTLEDGE: That element?

12 INMATE LUTHER: Yeah.

13 ATTORNEY RUTLEDGE: All right. And tell
14 us about your work record in prison. How many
15 -- I think you mentioned that you had gone life
16 only missing one day, is that true?

17 INMATE LUTHER: That's true.

18 ATTORNEY RUTLEDGE: And you remain in
19 contact with your children?

20 INMATE LUTHER: Yes.

21 ATTORNEY RUTLEDGE: I just wanted to ask
22 you, if you were released from prison four
23 months from today, what -- tell us about what
24 you'd do the first three days upon your release?

25 INMATE LUTHER: Spend it with my family
26 and probably sleep outside.

27 ATTORNEY RUTLEDGE: Sleep outside?

1 **INMATE LUTHER:** I'd just -- I haven't
2 seen the stars in years so, I'd just like to
3 sleep outside probably the first night and just
4 spend it with my grandma, my family's my number
5 one priority..

6 **ATTORNEY RUTLEDGE:** Have you been able to
7 meet your grandkids yet?

8 **INMATE LUTHER:** Yes. My oldest is --
9 well, it's my grandson, he's -- he just turned
10 eight, and my granddaughter, she'll be two next
11 month, well, this month, the end of this month.

12 **ATTORNEY RUTLEDGE:** So, when you get out,
13 are you planning to replace the support group
14 you have here with -- on the outside with other
15 Christian men? Or what's your plan for a
16 support group?

17 **INMATE LUTHER:** I'd like to get involved
18 with the church and -- you see it every year of
19 what -- on TV that people go and serve
20 Thanksgiving, I'd like to do that.

21 **ATTORNEY RUTLEDGE:** You want to get
22 involved like a prison ministry type of thing or
23 just help homeless people or what are you
24 thinking?

25 **INMATE LUTHER:** Just anywhere I can, just
26 to make a difference in society. Just to help
27 out. Just be positive, something positive.

1 **ATTORNEY RUTLEDGE:** You might want to
2 talk to other -- would you think you'd ever be
3 able to talk to youth in trouble or something
4 about your experiences? Would you be willing to
5 do that?

6 **INMATE LUTHER:** I would, yes. But first
7 I will have to give me, you know, get everything
8 together and -- I'm not really equipped -- real
9 vocal person as far as trying to get what I'm
10 trying to convey across. But in small settings,
11 I could see helping kids, keep kids from going
12 -- from doing drugs. I hate drugs with a
13 passion. And I see it every day in here. It's
14 just --

15 **ATTORNEY RUTLEDGE:** No further questions.

16 **PRESIDING COMMISSIONER GARNER:** Okay,
17 would you like to close?

18 **ATTORNEY RUTLEDGE:** Yes. Beginning with
19 the offense, it's a very unfortunate incident
20 and Mr. Luther, after the reports I've read,
21 he's maintained the same statement that he first
22 gave police. In fact, he called the police. In
23 reading the transcript from the last Hearing, he
24 answered all questions by the Board directly,
25 explaining what took place. He has identified
26 the factors that led to this behavior with the
27 psychologist. Both the psychology report and

1 the Board report are glowing about his insight
2 into the offense. It was wrong, even back to
3 the probation report done around the time of the
4 offense. He had made the same comments to the
5 Probation Officer, that he shouldn't have had a
6 gun, shouldn't have been -- let's see if I can
7 quote -- that he just had the gun to show the
8 guy out of his house. This person was on drugs
9 at the time, that he didn't mean to shoot him,
10 that when he hit him the gun went off. And, you
11 know, his prior offenses have nothing to do with
12 weapons or that sort of a thing. He indicated
13 that --

14 **DEPUTY COMMISSIONER BLONIEN:** Let me turn
15 the tape.

16 (Off the Record)

17 **DEPUTY COMMISSIONER BLONIEN:** Well, my
18 technical expertise has got us on tape again.

19 **ATTORNEY RUTLEDGE:** Excellent. All
20 right. Anyway, I was going over the comments
21 that Mr. Luther made at the time of the offense,
22 which seem consistent throughout his time in
23 custody, and notably, his counselor, a person
24 who deals with inmates as a career, said some
25 very good things. Under Item 4, Future Plans
26 Assessment, that he foresaw no problems with Mr.
27 Luther's ability to succeed on parole. He has

1 programmed exceptionally well, has excelled in
2 his work assignment. And his prior record is
3 relatively minor in nature. He has no juvenile
4 record. He will have no gang, drug or pattern
5 of violence issues which will inhibit his
6 progress. His parole plans appear solid. He
7 has an array of marketability -- marketability
8 for employment. It is my belief that Luther
9 harnesses a sincere level of remorse for his
10 life crime and will forever hold himself
11 accountable for the adverse effect it had on the
12 victim's family and his own. His intention was
13 not to take a life that tragic way. He accepts
14 responsibility and is focused on reunification
15 with his family and a successful parole.
16 And I really see that from the beginning of the
17 crime taking place, he fully cooperated. He
18 gave a statement and he's maintained that exact
19 same statement. He's taken responsibility for
20 his role in this tragedy. And over the years
21 while he's been incarcerated, has come to terms
22 with his, again, the causes that led to that,
23 the alcohol and the drugs. He had a pretty
24 strong social history as far as family
25 background. His parents, his ex-wife and his
26 children all still support him. I really would
27 like the Board to take a look at the letters

1 from his children. It looks to me like he has
2 matured. While he's been in here, he's
3 continued to father them from inside the prison
4 walls as best he can. As far as disciplinaries
5 go, minor writeups. No 115s in fifteen years.
6 He's got laudatory chronos for his work
7 successes. He's gotten ones and twos in a lot
8 of his work writeups. He did spend four years
9 in AA. He's actually had prison personnel give
10 him a vote of confidence for his adjustment on
11 parole. And he stays active with self-help by
12 reading the Overcomers' newsletter. He's -- and
13 he calls the Bible the best self-help book ever.
14 And is able to articulate to us how much that's
15 helping him, how much the Lord -- he's relied
16 upon his Lord to abstain from cigarettes,
17 alcohol and cussing.
18 He had numerous trades when he came, in the
19 construction field. But he still tried to pick
20 up some extra skills here at the direction of
21 the Board with his Led Certification. And I
22 would note too that I believe him when he says
23 that he's relying upon the Bible as a self-help
24 to abstain from these dangers. Nothing in his
25 record to show he's had any problems with
26 substance abuse while incarcerated, and his
27 counselor doesn't see as an issue either or the

1 psychologist. GAF score is 90. I think in
2 talking to him, it's evident he's very mature,
3 has a very positive attitude. He's taken care
4 of himself physically as he said, in
5 anticipation of working upon his release.
6 There's no reason for us not to believe that as
7 soon as he gets out, he's going to have the full
8 support of his family based upon their letters
9 and his comments. He's got jobs lined up for
10 him. He has plans to seek out support in a
11 church setting and possibly use his experiences
12 to help others. I would last, just note, on a
13 recent psych report, which is a glowing report,
14 he's an experienced journeymen carpenter and is
15 very knowledgeable about plumbing. He has been
16 active in AA for several years.
17 He talks about his commitment to the creator and
18 a strong commitment to live a life dedicated to
19 others. He also mentioned several times that
20 he's (indiscernible) victim's token of the
21 father. His feelings of remorse and sorrow
22 about this offense, and his actions appear to be
23 very sincere and genuine. He has also noted the
24 prison experience has been very beneficial to
25 him. He knows now the seriousness of his
26 actions and how important it is to change his
27 negative lifestyle, becoming a better person to

1 the best of his ability. I believe his comments
2 to the Board today and his demeanor support that
3 comment.

4 So, all these things considered, I think Mr.
5 Luther is an excellent candidate for re-entering
6 the community and I would ask the Board to
7 please give him a date for parole.

8 **PRESIDING COMMISSIONER GARNER:** Thank
9 you. Mr. Luther, this is your opportunity to
10 address the Board with respect to why you think
11 you're suitable.

12 **INMATE LUTHER:** I've tried to do
13 everything that the Board asked me to do as well
14 -- I've tried to do everything that everybody is
15 -- that whole process has just asked me to do
16 from the start. I've worked and stayed from
17 drugs and alcohol, and just tried to better my
18 life. And upon release, I feel I could do a lot
19 more for other people out there than I can in
20 here as far as for the younger kids. And
21 letting them know that just -- they might think
22 it's just, you know, a recreational drugs or
23 whatever. It's a whole lot more than that.
24 Drugs, I cannot stand drugs, and there's no way
25 I would ever do drugs again in my life. Bill
26 Gates don't have enough money to get me to do
27 drugs. And I just feel I could do a whole lot

1 more out there than I can in here.
2 And as far as -- I wish there was something that
3 I could do for his family, but there's really
4 nothing I know I could do other than to be a
5 better person. And on that that's all I know to
6 say.

7 **PRESIDING COMMISSIONER GARNER:** Okay,
8 well, thank you. The time is now 11:44 a.m.,
9 and we'll recess for deliberation.

10 **R E C E S S**

11 **--oOo--**

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1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER BLONIEN: Okay, we're
4 on record.

5 PRESIDING COMMISSIONER GARNER: Okay.

6 The time is now 12:02 p.m., in the matter of
7 Gary Luther, E Edward 98605. Mr. Luther, the
8 Panel's reviewed all the information received
9 from the public and relied on the following
10 circumstances in concluding you're not suitable
11 for parole and would pose an unreasonable risk
12 of danger to society or a threat to public
13 safety if released from prison. And, sir, we
14 started with the commitment offense in that it
15 was carried out in an especially cruel manner.
16 The offense was carried out in a manner which
17 demonstrated an exceptionally callous disregard
18 for human suffering in that the victim was found
19 to have had sustained one gunshot wound to the
20 head and three blunt force trauma wounds to the
21 head. Sir, the motive for this is basically --
22 it's the drug culture that -- you got yourself
23 caught up in something, you owed a drug dealer
24 money, you were concerned about that. And
25 again, I think you've identified now the impact
26 that drugs have on your life and what you've

1 done about it, which is commendable.

2 These conclusions were drawn from the Statement

3 of Facts that were contained in the Board report

4 of 2001, in that on December 24, 1990 at

5 approximately 5:25, a California Highway Patrol

6 unit was dispatched to East Haroling Avenue in

7 Oildale, California, in reference to a possible

8 injury accident.

9 Upon arrival, Officer Taggert contacted suspect

10 Luther, who advised he'd hit victim Obert with a

11 gun then placed the gun outside on a shelf.

12 While speaking with Luther, Officer Taggert

13 observed that the suspect was upset and crying.

14 Kern County Deputy Smallwood interviewed the

15 suspect Luther, who stated that while lying on

16 his bed, victim Obert arrived at the residence

17 uninvited. Luther grabbed a gun that he'd had

18 for approximately nine years, showed the victim

19 the gun then told him to get out. Luther

20 advised that the victim charged him in a

21 combative manner and to defend himself, he

22 struck victim Obert with the gun. He indicated

23 Obert fell to the floor and then he called 911

24 for emergency. He then threw the gun in the

25 patio area of the residence where Officer

26 Taggert later located it.

1 Sir, the Panel noted and considered the fact
2 that your previous criminal record was minor in
3 nature. Unfortunately, it also had some
4 elements of alcohol use involved in it. And
5 that during this particular period of time, that
6 there was some instability in your social
7 history associated with drugs and alcohol.
8 With respect to institutional behavior, the
9 Panel's concluded that you've programmed in a
10 limited manner considering the amount of time
11 that you've been in. We're also concerned that
12 you've failed to upgrade yourself educationally
13 where available and most importantly, we'll
14 speak to this in greater length later, but
15 you've not sufficiently participated in self-
16 help programs.

17 The Panel considered and noted that you've got
18 an exemplary record with respect to your
19 conduct. In 2000, you had a minor 128,
20 essentially of no significance. And more
21 importantly, that you've had no 115s during the
22 entire time that you've been incarcerated.

23 Psychiatric report dated December 2005 by Dr.
24 Macomber is a favorable report and it's
25 supportive. Sir, with respect to your parole
26 plans, we did go through all of the letters and
27 **GARY LUTHER E-98605 DECISION PAGE 3 1/10/06**

1 just so you know for the record, we read the
2 letter from your Aunt Mary, Debbie Luther, Cody
3 Luther, Crystal Luther, Russ Luther, your ex-
4 wife, Edith Brewton, a neighbor George
5 Chamberlain, the employment offers from
6 Schwebel, a letter from your mom and dad, and a
7 letter from your sister Joy. Sir, one of the
8 things that you need to do with these is all of
9 these letters were dated 2001, and while I have
10 no doubt that they're still valid, you need to
11 ~~get them updated each time you come to Board.~~
12 This could be a matter that could get you
13 slammed at review because there's no way to
14 verify. People's circumstances change, whether
15 a company is still in business, and again, the
16 person that's going to be reviewing this, isn't
17 going to have the benefit of sitting in front of
18 you and having you make these assertions as
19 opposed -- they're going to be strictly looking
20 at a record. So, when you come back for your
21 next Board, have all of these things updated and
22 made current so that we know that they're still
23 intact and would be available to you.
24 We did note that in response to the 3042
25 Notices, that we received no replies from any of
26 the people that received the letters. Sir, to
27 **GARY LUTHER E-98605 DECISION PAGE 4 1/10/06**

1 kind of follow up on the self-help, the Panel
2 concluded that you need some therapy in order to
3 face, discuss and understand and cope with
4 stress in a non-destructive manner, and until
5 some progress is made, that you continue to be
6 unpredictable and a threat to others.
7 Nevertheless, we've got a number of things we
8 want to commend you for. Your getting the Led
9 Certificate, again reaffirming the being
10 disciplinary free, positive work records, you're
11 just a good worker. And it shows, the chronos
12 that you received there. However, these factors
13 -- however, these positive aspects of your
14 behavior do not outweigh the factors of
15 unsuitability.
16 And in a separate decision, the Panel finds that
17 it's not reasonable to expect that a parole
18 would be granted during the next two years and
19 the specific reasons for those follows: that
20 the offense was carried out in an especially
21 cruel manner, in that on December 24, 1990 at
22 approximately 5:25 p.m., a California Highway
23 Patrol unit was dispatched to East Haroling
24 Avenue in Oildale, California, in reference to a
25 possible injury accident. Upon arrival Officer
26 Taggart contact suspect Luther, who advised that
27 **GARY LUTHER E-98605 DECISION PAGE 5 1/10/06**

1 he had hit victim Obert with a gun, then he
2 placed the gun on an outside shelf. While
3 speaking with Luther, Officer Taggert observed
4 the suspect was quite upset and crying. Kern
5 County Deputy Smallwood interviewed suspect
6 Luther, who stated that lying on his bed, victim
7 Obert arrived at the resident uninvited. Luther
8 grabbed the gun that he'd had for approximately
9 nine year, showed the victim the gun, then told
10 him to get out. Luther advised victim Obert
11 charged him in a combative manner and in
12 defending himself, he struck victim Obert with
13 the gun. He indicated Obert fell to the floor
14 and then he called 911 for emergency. He then
15 threw the gun in the patio area of the residence
16 where Officer Taggert later located it.

17 Again, sir, the offense was carried out in a
18 dispassionate manner, and that the offense was
19 carried out in a manner that demonstrates an
20 especially callous disregard for human
21 suffering, and again, we noted that the victim
22 sustained a gunshot wound to the back of the
23 head and that there were three blunt force
24 trauma wounds associated in the head area.

25 Sir, the Panel is going to make the following
26 recommendations to you and one, that you remain
27 **GARY LUTHER E-98605 DECISION PAGE 6 1/10/06**

1 disciplinary free, and that if it's possible,
2 get yourself updated educationally, and also
3 participate in self-help and with this, I'm
4 going to ask Commissioner Blonien if she had any
5 recommendations for you.

6 **DEPUTY COMMISSIONER BLONIEN:** I was
7 trying to think of an analogy to talk to you, to
8 tell you what you need, but I'm just going to
9 say straight what you need. You've got this
10 group of inmates out there that are your friends
11 and I don't know if any of them are lifers and
12 are going through this process. If they are, I
13 think you should talk about the lifer process,
14 and you need to not -- if I was going to build a
15 house for you, and I would tell you it's going
16 to be done in a year, and you'd say well,
17 where's the written plan? And I'd say well, I
18 don't have one. I'm just going to build it.
19 And then you'd say well, do you have concrete
20 guy, and I'd say, no, but I'm going to find one.
21 We need definite. We need to know that when you
22 get out, you're going to have support out there,
23 that the letters are current from your family,
24 cause you have wonderful letters, and I --
25 you're in touch with your family, they could
26 easily update and solidify your parole plan,

1 which has to include a solid component of help
2 for your alcohol and drug problems that you had
3 in the past. You just saying, it's never going
4 to happen again, is not enough. It may be
5 enough for you, but it's not enough for the
6 community that you're going to parole into. And
7 you can do all that because you have all of that
8 available to you, and I hope you do it, and come
9 much better prepared to the Hearing so that this
10 hard work that you are doing and the
11 accomplishments that you are making every day,
12 benefit you. So, I wish you good luck.

13 **PRESIDING COMMISSIONER GARNER:** Okay.
14 The time is now 12:12 p.m. and that concludes
15 this Hearing.

16 --oOo--
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22

23 **PAROLE DENIED TWO YEARS**

24 **THIS DECISION WILL BE FINAL ON: 05/10/2006**

25 **YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT**
26 **DATE, THE DECISION IS MODIFIED.**

27 **GARY LUTHER E-98605 DECISION PAGE 8 1/10/06**

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, P. M. LaCHAPELLE, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 53, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING OF GARY LUTHER, CDC NO. E-98605, ON JANUARY 10, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated January 21, 2006, at Sacramento, California.

P. M. LaChapelle

P. M. LaCHAPELLE
TRANSCRIBER
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